

## 37 Am. Jur. 2d Fraud and Deceit § 7

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### Fraud and Deceit

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#### I. Overview

##### A. In General; Definitions and Types of Fraud

### § 7. False representation, misrepresentation, concealment, and false pretenses

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Fraud](#)  1

"Fraud" may consist of both active misrepresentation and passive silence.<sup>1</sup> Most fraud cases are based on either false representations of material facts<sup>2</sup> or concealment of material facts.<sup>3</sup> Indeed, actionable fraud has been said to be the concealment of a fact that should have been disclosed or the representation of the existence of a material fact that did not exist.<sup>4</sup> "False" may mean untrue, or it may mean designedly untrue, implying an intention to deceive, as where it is applied to the representations of one inducing another to act to his or her own injury.<sup>5</sup> Fraudulent representations are those proceeding from, or characterized by, fraud, the purpose of which is to deceive.<sup>6</sup> A representation, within the meaning of the law of fraud, is anything short of a warranty that proceeds from the action or conduct of the party charged and is sufficient to create upon the mind a distinct impression of fact conducive to action.<sup>7</sup>

#### Observation:

An intentional misrepresentation is generally an element of fraud, although the terms "fraud" and "intentional misrepresentation" are often used interchangeably in common parlance.<sup>8</sup> A court has recognized the potential viability of a claim of intentional misrepresentation in a case where a doctor misrepresented his or her qualifications to a patient.<sup>9</sup>

A misrepresentation is a misstatement of fact<sup>10</sup> and has been said to be that which, if accepted, leads the mind to an apprehension of a condition other and different from that which exists.<sup>11</sup> A misrepresentation is an assertion that is not in accord with the facts,<sup>12</sup> and for the purposes of a fraud claim, a misrepresentation is a falsehood or untruth with the intent and purpose to deceive.<sup>13</sup>

Where distinctively used, “misrepresentation” may be said to import a positive and false statement as to the subject matter of a transaction;<sup>14</sup> “concealment” implies the nondisclosure of some fact which should be revealed;<sup>15</sup> and “false pretenses” means any trick or device whereby the property of another is obtained.<sup>16</sup>

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#### Footnotes

- <sup>1</sup> [Vela v. Marywood](#), 17 S.W.3d 750 (Tex. App. Austin 2000), review denied with per curiam opinion, 53 S.W.3d 684 (Tex. 2001).
- <sup>2</sup> §§ 59 to 62.
- <sup>3</sup> §§ 194 to 204.
- <sup>4</sup> [Premier Poultry Co. v. Wm. Bornstein & Son](#), 61 A.2d 632 (Mun. Ct. App. D.C. 1948).
- <sup>5</sup> [Sallies v. Johnson](#), 85 Conn. 77, 81 A. 974 (1911); [Monahan v. Mutual Life Ins. Co. of New York](#), 192 Wis. 102, 212 N.W. 269 (1927).
- <sup>6</sup> [De Vall v. Strunk](#), 96 S.W.2d 245 (Tex. Civ. App. Galveston 1936).
- <sup>7</sup> [Wettlaufer Mfg. Corp. v. Detroit Bank](#), 324 Mich. 684, 37 N.W.2d 674 (1949); [Groening v. Opsata](#), 323 Mich. 73, 34 N.W.2d 560 (1948).
- <sup>8</sup> [Tschira v. Willingham](#), 135 F.3d 1077, 48 Fed. R. Evid. Serv. 981, 1998 FED App. 0042P (6th Cir. 1998) (applying Tennessee law).
- <sup>9</sup> [Wooding v. U.S.](#), 374 Fed. Appx. 309 (3d Cir. 2010).
- <sup>10</sup> [American Laundry Machinery Co. v. Skinner](#), 225 N.C. 285, 34 S.E.2d 190 (1945).
- <sup>11</sup> [Haigh v. White Way Laundry Co.](#), 164 Iowa 143, 145 N.W. 473 (1914) (also stating that colloquially, misrepresentation is understood to mean a statement made to deceive or mislead).
- <sup>12</sup> Restatement Second, Contracts § 159.
- <sup>13</sup> [Casstevens v. Smith](#), 269 S.W.3d 222 (Tex. App. Texarkana 2008).
- <sup>14</sup> [Central of Georgia Ry. Co. v. Goodwin](#), 120 Ga. 83, 47 S.E. 641 (1904).
- <sup>15</sup> [Opie v. Pacific Inv. Co.](#), 26 Wash. 505, 67 P. 231 (1901).
- <sup>16</sup> [Downey v. Finucane](#), 205 N.Y. 251, 98 N.E. 391 (1912).  
As to the offense of obtaining money or property by false pretenses, see [Am. Jur. 2d, False Pretenses](#) §§ 1 to 9.